



# Focus

## SHORELINE MANAGEMENT. Exemptions from the Substantial Development Permit Process

### Background

The Shoreline Management Act (SMA) is a statewide land use law that regulates development and uses on or near most lakes, streams or marine waters. Proposals are evaluated in light of state and local law and their potential effects on shoreline resources. Standards and procedures to administer the SMA are found in Ch. 90.58 RCW and Ch. 173-27 WAC.

For information on the SMA and how it works, see, "Introduction to the Shoreline Management Act", December 1999, Ecology Publication 99-13. Also you can visit our website at [www.ecy.wa.gov/programs/sea](http://www.ecy.wa.gov/programs/sea).

### Exemption or Permit?

Since proposals to use and develop the shoreline come in great variety, it is often difficult to determine whether a given proposal requires a "substantial development permit" (SDP) or is exempt from that process. If a proposal is not exempt, then it requires a substantial development permit. The permit process takes longer and requires greater public and agency scrutiny. The permit process allows interested or affected parties to participate in decision-making. Although a project or use may be exempted from the SDP process, this does not modify or eliminate any requirement for a shoreline variance or conditional use permit.

The Department of Ecology (Ecology) receives many inquiries from local government staff who seek assistance in making exemption decisions. The purpose of this FOCUS sheet is to help shoreline planners better understand those aspects of exemption administration that have historically posed the greatest interpretive challenges. It should also encourage and assist more consistent application of the SMA across the state.

### Guidance in Administering SMA Exemptions

All developments and uses occurring within "shorelines" and "shorelines of state-wide significance," as defined in RCW 90.58.030, must be consistent with the SMA and with all applicable policies and regulations of the local shoreline master program (SMP). Certain developments and uses are exempt from the SDP process. A complete list of exempt developments is set out in and limited to those found in RCW 90.58.030(3)(e), 90.58.147, 90.58.515 and WAC 173-27-040. Some of the more common shoreline exemptions are:

- Normal maintenance or repair of an existing structure that was lawful when constructed;
- Constructing a normal protective bulkhead common to a single-family residence;

- Emergency construction needed to protect property from damage by the elements;
- Certain normal and necessary farming and ranching practices; and
- Constructing a single-family residence for one's own use.

When administering exemptions, it is important to keep the following points in mind:

- Applications should be specific and in writing. Site plans should be included.
- Applications for exemption should be carefully scrutinized to make sure they meet all substantive requirements of the SMA and SMP. Applicants can modify a project, and agencies can place conditions on proposals to ensure full compliance. Administrators should document what was specifically approved, and perhaps even clarify what was not approved. This may prove to be very important in later appeals or other decision-making.
- One cannot legally begin to build a structure that is exempted under the SMA until all other local, state and federal permits have been obtained.
- Exemptions should be granted only after meaningful review under the State Environmental Policy Act (SEPA), unless the proposed project is categorically exempt under SEPA (see RCW 43.21C and WAC 197-11).
- Under WAC 173-27-040(1)(a), "Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process." If there is doubt about whether a proposal qualifies as an exemption, a substantial development permit should be required. It may be advisable to call Ecology staff to discuss the matter early in the decision-making process.
- Emergency exemptions are not to allow new, permanent structures. When an applicant demonstrates an urgent and unforeseeable need, temporary measures are allowed. After the emergency passes, the project applicant must either remove the structure or obtain a permit.
- The burden of proof to show that a development or use qualifies for an exemption rests with the applicant.
- If any portion of a proposed development does not qualify for an exemption, an SDP is required for the entire project.
- Local governments are required to send exemptions to Ecology if federal actions are required to approve the project. Local governments are encouraged to send all exemptions to Ecology.

### **For further information**

Contact the county or city planning department where the project is located or call the SEA Program at the appropriate regional office of the Department of Ecology and ask to speak to a shoreline specialist to assist you.

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 Bellevue (425) 649-7000  
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Spokane (509) 456-2926  
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